

Employment and Training Administration, Labor

§ 654.403

set forth at 29 CFR 1910.142 or the full set of standards set forth in this subpart. Whichever is applicable under the criteria set forth in § 654.401; except that for mobile range housing for sheepherders, the housing shall meet existing Departmental guidelines.

[45 FR 14182, Mar. 4, 1980; 45 FR 22901, Apr. 4, 1980]

§ 654.401 Applicability; transitional provisions.

(a) Employers whose housing was constructed in accordance with the ETA housing standards may continue to follow the full set of ETA standards set forth in this subpart only where prior to April 3, 1980 the housing was completed or under construction, or where prior to March 4, 1980 a contract for the construction of the specific housing was signed.

(b) To effectuate these transitional provisions, agricultural housing to which this subpart applies and which complies with the full set of standards set forth in this subpart shall be considered to be in compliance with the Occupational Safety and Health Administration temporary labor camp standards at 29 CFR 1910.142.

§ 654.402 Variances.

(a) An employer may apply for a permanent, structural variance from a specific standard(s) in this subpart by filing a written application for such a variance with the local Job Service office serving the area in which the housing is located. This application must be filed by June 2, 1980 and must:

(1) Clearly specify the standard(s) from which the variance is desired;

(2) Provide adequate justification that the variance is necessary to obtain a beneficial use of an existing facility, and to prevent a practical difficulty or unnecessary hardship; and

(3) Clearly set forth the specific alternative measures which the employer has taken to protect the health and safety of workers and adequately show that such alternative measures have achieved the same result as the standard(s) from which the employer desires the variance.

(b) Upon receipt of a written request for a variance under paragraph (a) of this section, the local Job Service office

shall send the request to the State office which, in turn, shall forward it to the Regional Administrator, Employment and Training Administration (RA). The RA shall review the matter and, after consultation with OSHA, shall either grant or deny the request for a variance.

(c) The variance granted by the RA shall be in writing, shall state the particular standard(s) involved, and shall state as conditions of the variance the specific alternative measures which have been taken to protect the health and safety of the workers. The RA shall send the approved variance to the employer and shall send copies to the Regional Administrator of the Occupational Safety and Health Administration, the Regional Administrator of the Employment Standards Administration, and the appropriate State agency and the local Job Service office. The employer shall submit and the local Job Service office shall attach copies of the approved variance to each of the employer's job orders which is placed into intrastate or interstate clearance.

(d) If the RA denies the request for a variance, the RA shall provide written notice stating the reasons for the denial to the employer, the appropriate State agency and the local Job Service office. The notice shall also offer the employer an opportunity to request a hearing before a DOL Hearing Officer, provided the employer requests such a hearing from the RA within 30 calendar days of the date of the notice. The request for a hearing shall be handled in accordance with the employment service complaint procedures set forth at §§ 658.421 (i) and (j), 658.422 and 658.423 of this chapter.

(e) The procedures of paragraphs (a) through (d) of this section shall only apply to an employer who has chosen, as evidenced by its written request for a variance, to comply with the ETA housing standards at §§ 654.404—654.417 of this subpart.

§ 654.403 Conditional access to the intrastate or interstate clearance system.

(a) *Filing requests for conditional access*—(1) “Noncriteria” employers. Except as provided in paragraph (a)(2) of this section, an employer whose housing

does not meet applicable standards may file with the local Job Service office serving the area in which its housing is located, a written request that its job orders be conditionally allowed into the intrastate or interstate clearance system, provided that the employer's request assures that its housing will be in full compliance with the requirements of the applicable housing standards at least 20 calendar days (giving the specific date) before the housing is to be occupied.

(2) *"Criteria" employers.* If the request for conditional access described in paragraph (a)(1) of this section is from an employer filing a job order pursuant to an application for temporary alien agricultural labor certification for H-2A alien agricultural workers or H-2 alien workers under subpart B or subpart C, respectively, of part 655 of this chapter, the request shall be filed with the RA as an attachment to the application for temporary alien agricultural labor certification.

(3) *Assurance.* The employer's request pursuant to paragraphs (a)(1) or (a)(2) of this section shall contain an assurance that the housing will be in full compliance with the applicable housing standards at least 20 calendar days (stating the specific date) before the housing is to be occupied.

(b) *Processing requests—(1) State agency processing.* Upon receipt of a written request for conditional access to the intrastate or interstate clearance system under paragraph (a)(1) of this section, the local Job Service office shall send the request to the State office, which, in turn, shall forward it to the Regional Administrator, Employment and Training Administration, (RA).

(2) *Regional office processing and determination.* Upon receipt of a request for conditional access pursuant to paragraph (a)(2) or paragraph (b)(1) of this section, the RA shall review the matter and, as appropriate, shall either grant or deny the request.

(c) *Authorization.* The authorization for conditional access to the intrastate or interstate clearance system shall be in writing, and shall state that although the housing does not comply with the applicable standards, the employer's job order may be placed into intrastate or interstate clearance until

a specified date. The RA shall send the authorization to the employer and shall send copies to the appropriate State agency and local Job Service office. The employer shall submit and the local Job Service shall attach copies of the authorization to each of the employer's job orders which is placed into intrastate or interstate clearance.

(d) *Notice of denial.* If the RA denies the request for conditional access to the intrastate or interstate clearance system, the RA shall provide written notice to the employer, the appropriate State agency, and the local Job Service office, stating the reasons for the denial.

(e) *Inspection.* (1) The local Job Service office serving the area containing the housing of any employer granted conditional access to the intrastate or interstate clearance system shall assure that the housing is inspected no later than the date by which the employer has promised to have its housing in compliance with the requirements of this subpart. An employer, however, may request an earlier preliminary inspection. If, on the date set forth in the authorization, the housing is not in full compliance with the applicable housing standards as assured in the request for conditional access, the local Job Service office shall afford the employer five calendar days to bring the housing into full compliance. After the five-calendar-day period, if the housing is not in full compliance with the applicable housing standards as assured in the request for conditional access, the local Job Service office immediately:

(i) Shall notify the RA;

(ii) Shall remove the employer's job orders from intrastate and interstate clearance; and

(iii) Shall, if workers have been recruited against these orders, in cooperation with the employment service agencies in other States, make every reasonable attempt to locate and notify the appropriate crew leaders or workers, and to find alternative and comparable employment for the workers.

[52 FR 20506, June 1, 1987, as amended at 64 FR 34965, June 29, 1999]

HOUSING STANDARDS

§ 654.404 Housing site.

(a) Housing sites shall be well drained and free from depressions in which water may stagnate. They shall be located where the disposal of sewage is provided in a manner which neither creates nor is likely to create a nuisance, or a hazard to health.

(b) Housing shall not be subject to, or in proximity to conditions that create or are likely to create offensive odors, flies, noise, traffic, or any similar hazards.

(c) Grounds within the housing site shall be free from debris, noxious plants (poison ivy, etc.) and uncontrolled weeds or brush.

(d) The housing site shall provide a space for recreation reasonably related to the size of the facility and the type of occupancy.

§ 654.405 Water supply.

(a) An adequate and convenient supply of water that meets the standards of the State health authority shall be provided.

(b) A cold water tap shall be available within 100 feet of each individual living unit when water is not provided in the unit. Adequate drainage facilities shall be provided for overflow and spillage.

(c) Common drinking cups shall not be permitted.

§ 654.406 Excreta and liquid waste disposal.

(a) Facilities shall be provided and maintained for effective disposal of excreta and liquid waste. Raw or treated liquid waste shall not be discharged or allowed to accumulate on the ground surface.

(b) Where public sewer systems are available, all facilities for disposal of excreta and liquid wastes shall be connected thereto.

(c) Where public sewers are not available, a subsurface septic tank-seepage system or other type of liquid waste treatment and disposal system, privies or portable toilets shall be provided. Any requirements of the State health authority shall be complied with.

§ 654.407 Housing.

(a) Housing shall be structurally sound, in good repair, in a sanitary condition and shall provide protection to the occupants against the elements.

(b) Housing shall have flooring constructed of rigid materials, smooth finished, readily cleanable, and so located as to prevent the entrance of ground and surface water.

(c) The following space requirements shall be provided:

(1) For sleeping purposes only in family units and in dormitory accommodations using single beds, not less than 50 square feet of floor space per occupant;

(2) For sleeping purposes in dormitory accommodations using double bunk beds only, not less than 40 square feet per occupant;

(3) For combined cooking, eating, and sleeping purposes not less than 60 square feet of floor space per occupant.

(d) Housing used for families with one or more children over 6 years of age shall have a room or partitioned sleeping area for the husband and wife. The partition shall be of rigid materials and installed so as to provide reasonable privacy.

(e) Separate sleeping accommodations shall be provided for each sex or each family.

(f) Adequate and separate arrangements for hanging clothing and storing personal effects for each person or family shall be provided.

(g) At least one-half of the floor area in each living unit shall have a minimum ceiling height of 7 feet. No floor space shall be counted toward minimum requirements where the ceiling height is less than 5 feet.

(h) Each habitable room (not including partitioned areas) shall have at least one window or skylight opening directly to the out-of-doors. The minimum total window or skylight area, including windows in doors, shall equal at least 10 percent of the usable floor area. The total openable area shall equal at least 45 percent of the minimum window or skylight area required, except where comparably adequate ventilation is supplied by mechanical or some other method.